U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: SRC-97-077-50600 Office: Texas Service Center Date: JAN 11 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Public Copy

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged primarily in the national and international distribution of construction and building materials. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its chief executive officer. The director determined that the petitioner had not established that it was doing business as an import/export company.

On appeal, counsel states that:

> 1. The INS District Director (hereinafter D.D.) erred in finding that the Petitioner, [redacted] employer, had not satisfied the burden of proof for an L-1 visa extension of beneficiary...as an L-1 manager pursuant to INA Section 101(a)(15)(L), 8 USC Section 1101(a)(15)(L) and Matter of Treasure Craft of California, 14 I&N Dec. 190, said denial being an abuse of discretion.
>
> 2. That the INS D.D. misapplied the law and abused discretion by denying Petitioner's L-1 visa extension of beneficiary...as an L-1 manager as such decision failing to adequately consider the evidence of Petitioner's by giving undue weight to the manner by which petitioner was doing business through other third party independent contractors...

Counsel had indicated that additional evidence would be submitted in support of the appeal on or before June 20, 1998. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

It is noted that a Service investigation revealed that the petitioner's address as reflected on the petition was the beneficiary's personal residence. At the time of the investigation, the beneficiary no longer resided there.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

> (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
>
> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
>
> (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
>
> (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
>
> (E) Evidence of the financial status of the United States operation.

The United States petitioner was established in 1995 and states that it is a majority-owned subsidiary of [redacted] located in [redacted]. The petitioner seeks to extend the employment of the beneficiary for a two-year period at an annual salary of $50,000.

At issue in this proceeding is whether the petitioner is doing business.

Title 8 C.F.R. 214.2(l)(1)(ii)(H) states:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In his decision, the director noted that the petitioner had not submitted, as requested, copies of U.S. Customs documents establishing that the petitioner was doing business.

On appeal, counsel has not submitted the requested documentation.

The record indicates that the U.S. entity was incorporated on September 21, 1995, and the beneficiary was granted L-1A status from January 12, 1996 through January 12, 1997. The present

petition was filed on January 13, 1997. For the purposes of this proceeding, the beneficiary must have been eligible for the benefit sought at the time of the filing of the petition for an extension. Service regulations require a new office to demonstrate viability after the initial one-year period. 8 C.F.R. 214.2(l)(14)(ii).

The petitioner's 1996 corporate income tax return reflects the following: $89,703 in gross receipts or sales; $0 in compensation of officers; and $0 in salaries and wages. The petitioner's 1997 corporate income tax return reflects the following: $59,355 in gross receipts or sales; $14,400 in compensation of officers; and $0 in salaries and wages. The petitioner has submitted documents such as contracts, agreements, and invoices to demonstrate that the U.S. entity is doing business. However, evidence such as contracts and agreements in and of themselves do not demonstrate business activity. Two of the four invoices that the petitioner has submitted are dated after the filing date of the petition for an extension. The remaining two invoices dated March 12, 1996, and May 22, 1996, reflect sales of $32,000 and $34,200, respectively. Although the evidence indicates that some business activity has taken place, the evidence in the record does not sufficiently demonstrate that the petitioner is engaged in the regular, systematic, and continuous provision of goods and/or services. For this reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.